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August 4, 1999

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 - 12<sup>th</sup> Street, SW – Room TWB-204  
Washington, DC 20554

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AUG 4 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: Ex Parte – CC Docket 96-115  
Telecommunications Carriers Use of Customer Proprietary  
Information and Other Carrier Information

Dear Ms. Salas:

Yesterday afternoon, 3 August 1999, AT&T Senior Vice President Leonard J. Cali and I met with Peter J. Tenhula, senior legal advisor to Commissioner Powell. We discussed AT&T's views as previously expressed in this proceeding.

In addition, we emphasized the importance of modifying the *CPNI Order* to permit use of the corporation's legitimate business asset, CPNI regarding past customers, in offering these consumers the best possible marketplace alternatives now and in the future.

AT&T also reviewed wireless, electronic audit trail, first screen flag and grandfathering provisions in the Order that need to be revisited and modified. Copies of the material provided are attached.

In accordance with Section 1.1206(a)(2) of the Commission's rules, two copies of this Notice are being submitted to the Secretary for inclusion in the public record for the above-captioned proceeding. Due to the lateness of the hour, this is being submitted on the next business day.

Sincerely,

Attachments

cc: Mr. Tenhula  
Mr. Cali

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**CC 96-115: CPNI**  
**August 4, 1999**

The Telecom Act's Section 222 adopted "total service approach" to use of CPNI for marketing purposes. In the *CPNI Order*, the FCC found carriers may use CPNI, without further customer approval, to market offerings related to the customer's "existing business relationship." FCC concluded this would offer convenience and meet consumer expectations.

**Winbacks**

- No statutory prohibition on the use of CPNI to win back a customer with whom the carrier had a prior service relationship. Section 222(d)(1) allows the use of CPNI to initiate and render service, including to a former customer. Use of CPNI for winback marketing in competitive markets such as long distance is the hallmark of competition. What is wrong with letting carriers make customized offers to the same customer?
- *CPNI Order* wisely found that most carriers "view CPNI as an important asset of their business" and "*hope to use CPNI as an integral part of their future marketing plans.*" FCC concluded that "as competition grows", CPNI "*becomes a powerful resource for identifying potential customers and tailoring marketing strategies to maximize customer response.*"
- Utilizing CPNI for winback offers within the category of service (local, LD and/or wireless) to which the former customer had subscribed is consistent with customer expectations and imperative if consumer is to fully benefit from innovative new service offerings and lower prices.
- Public Record: overwhelming consensus exists in public record for rescinding prohibition. The discriminatory use of winback (i.e. abuse of PIC freezes and customer change requests to an ILEC) independently is prohibited by Sections 222(b) and 201(b).

## **Wireless**

- FCC should lift its prohibition on carriers using wireless CPNI to market mobile handsets and related information services.
- Contrary to FCC Order, Section 222(c)(1) does not preclude recognition that a mobile handset is, in effect, a part of the service from which the CPNI is derived or, like inside wire, is necessary to or used in the provision of telecom services.
- Likewise, the carrier should be permitted to market information services based on CPNI without prior customer approval when these services are offered as part of the total service package. This is key for customer to interchangeably use voice mail and e-mail.

## **Electronic Audit Trail/First Screen Flag**

- Creating an electronic audit mechanism that tracks access to customer accounts and records and maintains those records for one year does not work. Even after heavy expenditures, it would be easily circumvented.
- AT&T handles over 5 billion calls/month. Most CPNI accessed by billing systems that interact with one another and by corporate security systems designed to detect fraud and abuse. Each call results in a call record that is stored in or accessed by multiple systems. To comply with Order, over 400 systems would be impacted – with 80% of the new expense related to systems where the use of CPNI is permissible without customer consent (i.e. billing).
- Developing such an audit mechanism involves the same resources and systems that are currently being employed in Y2K compliance efforts.

- Instead of an electronic audit trail, the Industry Coalition (1/12/99) suggests rule modification to require carriers to maintain a file – either electronically or in some other manner – of its *marketing campaigns that use CPNI*. Include a description of the campaign (date and purpose) and the CPNI that was used in it. Specify what products or services were offered in campaign.
- This Industry Coalition proposal furthers public policy goals. The record will show how the carrier was using CPNI in its inbound and outbound marketing efforts. It will provide a means to investigate should a dispute or complaint occur.
- Order requires CPNI approval flags to be conspicuously displayed within a box or comment field or within the first few lines of the computer screen, along with the customer's existing service subscription.
- To the extent that a CPNI database is not used for out-of-category marketing, of course, the FCC should clarify that the first screen requirement does not apply.
- 
- Industry Coalition (1/12/99 letter) suggests replacing flag rule with requirement that carrier marketing personnel must determine a customer's *CPNI approval status* and service subscription status *prior to use of CPNI for out-of-category marketing*.
- Flexibility important – carriers should be allowed to effectuate above requirement through (for instance) first screen flag, centralized database, manual inquiry, or a decision not to use CPNI for out-of-category marketing.
- Industry Coalition (1/12/99 letter) also proposes that carrier must establish an *"internal compliance oversight function"* and conduct an *"annual CPNI compliance review."*

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Judy Sello  
Senior Attorney

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January 12, 1999

Ms. Carol Matthey  
Chief, Policy & Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

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JAN 12 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-115: CPNI Electronic Safeguards

Dear Ms. Matthey:

Per your request, this will summarize the points that I made on behalf of the CPNI Coalition in our *ex parte* meeting on January 8, 1999 (see formal *ex parte* letter and written proposal that were filed at the FCC on January 11, 1999). In the pending petitions for reconsideration in this docket, virtually all carriers had challenged the Commission's *CPNI Order*<sup>1</sup> adopting rules imposing electronic safeguards, namely, (i) flagging, and (ii) electronic auditing. 47 C.F.R. Sections 64.2009(a) and (c).

The purpose of the flagging requirement (Section 64.2009(a)) is that carrier personnel engaged in marketing activities are able to determine customer CPNI approval status in order to use, or refrain from using, CPNI to market products and services outside of the service category to which the customer subscribes (*i.e.*, local, interexchange, and CMRS). As demonstrated by the record, the flagging requirement is problematic and costly for various carriers, both large and small. For example, although most AT&T's consumer databases can quite readily accommodate a first screen flag, its business customer systems cannot. Moreover, some smaller carriers do not use electronic databases. Also, many carriers have databases that contain customer records from only one service category and plan to use that database to offer services within that one service category to their existing customers, thereby negating the need to flag the accounts in that

<sup>1</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998 ("*CPNI Order*").

database. Thus, an inflexible first screen flag rule is not a cost-effective solution to the Commission's goal of ensuring that carriers do not misuse CPNI.

The CPNI Coalition's proposed modification of Section 64.2009(a) effectuates the goal of the Commission's flagging rule in a less burdensome and more effective manner. Specifically, it requires each carrier to establish guidelines that direct its marketing personnel (*i.e.*, any personnel engaged in marketing) to determine a customer's CPNI approval and service subscription status prior to using CPNI for out-of-category marketing. It further requires that the approval and status information be available, either electronically or in some other manner, to marketing personnel in a readily accessible and easily understandable format. Thus, the Coalition's proposed modification would permit carriers to use a first screen flag, a centralized database or non-electronic means, whichever is most cost-effective for the carrier and its particular business unit. At the same time, the Commission's policy goal of ensuring that carriers do not misuse CPNI is carried out by the requirements that (i) carriers direct that the customer's CPNI approval and service subscription status be determined prior to use of CPNI for marketing a product or service outside of the service category to which the customer subscribes, and that (ii) this information be made available by the carrier to its personnel engaged in marketing in a readily accessible and easily understandable format.

The Commission's electronic auditing requirement (Section 64.2009(c)) would require carriers to electronically track access to individual customer accounts. This requirement would generate massive and senseless data storage requirements, which in MCI WorldCom's estimation would cost it alone \$1 billion annually. Other carriers also estimated costs associated with this requirement to run into the hundreds of millions of dollars - - an expenditure without any demonstrated offsetting consumer dividend or need.

Accordingly, the CPNI Coalition suggests that the purpose of the electronic auditing rule, namely, to track how CPNI is used, could be better effectuated by the proposed modifications to Sections 64.2009(c) and (e). The revised electronic auditing rule (Section 64.2009(c)) would require each carrier to maintain a file, either electronically or in some other manner, of its marketing campaigns that use CPNI, that includes a description of the campaign and the CPNI that was used in the campaign, its date and purpose, and what products and services were offered as part of the campaign. This record would show how the carrier was using CPNI in its outbound and inbound marketing efforts and provide the means to investigate should a dispute or complaint occur.

Section 64.2009(c), coupled with the proposed clarification of the officer certification requirement (Section 64.2009(e)) that would require each carrier to establish an internal compliance oversight function to monitor ongoing CPNI compliance efforts and conduct an annual CPNI compliance review, ensures that the Commission's goal that access to CPNI is appropriate is met. The proposed rules accomplish this by testing through the internal oversight process whether the carrier's CPNI training has been effective and its employees are using CPNI consistently with the substantive requirements of the Commission's rules. Thus, under the CPNI Coalition's proposal, the more limited tracking

under Section 64.2009(c) is offset by an internal audit under Section 64.2009(e). This audit, instead of compiling billions of useless bits of access data regarding individual accounts under the Commission's electronic auditing rule, actually tests the efficacy of the carrier's CPNI compliance program.

The CPNI Coalition also proposed two other revisions to Section 64.2009(e): (i) changing "corporate officer" to "officer," and (ii) eliminating the requirement that the officer have "personal knowledge" of the carrier's CPNI compliance. Some smaller carriers are sole proprietorships, partnerships or cooperatives, rather than corporations. For larger carriers, the officer certifying CPNI compliance would rarely have personal knowledge but rather is likely to rely on the input from company managers. Removing the personal knowledge requirement is consistent with this fact as well as with typical attestations that require certification "to the best of my knowledge, information and belief."

Finally, the CPNI Coalition made the point that it is not surprising that there is no widespread consumer group interest in the electronic safeguards aspect of the Commission's CPNI proceeding. First, most carriers have been dealing responsibly with CPNI for decades, and there is no outstanding consumer privacy issue to be addressed. Second, the electronic safeguards requirements are internal carrier compliance mechanisms that do not directly implicate areas of consumer interest such as the type of CPNI notice consumers receive from carriers concerning their CPNI rights and the form of approval that the consumer provides the carrier. Third, there are other rules that impact consumer privacy, such as the Caller ID rules (Section 64.1200), that have worked well where the Commission has set forth the substantive privacy protections but has not sought to create a blueprint for how the carrier uses its systems to effectuate compliance.

For all of these reasons, the CPNI Coalition strongly urges the Commission to take action to eliminate the inordinately costly electronic auditing and first screen flag requirements of the *CPNI Order*, in favor of the proposed alternatives that achieve the Commission's public policy objectives without unnecessarily burdening carriers and their customers.

Sincerely,

  
Judy Sello

*Copies to:*

Thomas Power  
James Casserly  
Kevin Martin  
Kyle Dixon  
Paul Gallant

Larry Strickling  
Bill Agee  
Anthony Mastando  
Jeanine Poltronieri  
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January 21, 1999

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW - Room TWB-204  
Washington, DC 20554

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JAN 21 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: *Ex Parte* - CC Docket No. 96-115  
Telecommunications Carriers' Use of Customer Proprietary Information  
and Other Carrier Information

Dear Ms. Salas:

Earlier today, Judy Sello and I, both of AT&T, met with Margaret Egler, William Agee, Anthony Mastando, and Eric Einhorn, (all of the Common Carrier Bureau's Policy Division), and Peter Wolfe of the Wireless Telecommunications Bureau's Policy Division. We discussed AT&T's positions as previously presented in this proceeding.

In particular, we discussed: (1) why the prohibition on the use of CPNI for customer winback purposes is anti-competitive and deprives consumers of essential benefits of competition, (2) the use of CPNI to market CPE and information services, and (3) the inadequacy of BOC CPNI safeguards. The materials used during this discussion are attached.

In accordance with Section 1.1206(a)(2) of the Commission's rules, two copies of this Notice are being submitted to the Secretary of the Commission for inclusion in the public record for the above-captioned proceeding.

Sincerely,

Attachment

cc: W. Agee  
E. Einhorn  
P. Wolfe  
M. Egler  
A. Mastando

## AT&T'S CPNI RECONSIDERATION POSITIONS

### I. WINBACK

-Prohibition on use of CPNI for winback is anticompetitive and deprives consumers of essential benefits of competition: obtaining least costly and most useful service from carrier (customized offers)

-No statutory prohibition

-222(d)(1) allows use of CPNI to initiate and render service to former customer

-No privacy issue: customers expect carriers to try to win them back

-Discriminatory use of CPNI (e.g., ILEC abuse of its gatekeeper function is prohibited by 222(b) and 201(b))

-ILEC bottleneck facilities, ubiquitous local service, presubscription databases, access services

-FCC correctly recognized limitations on ILEC marketing use of CPNI in Slamming Order (12/23/98)

### II. CPE AND INFORMATION SERVICES

#### A. WIRELESS SERVICES

-All wireless carriers should be permitted to use wireless CPNI to market mobile phones and information services

-Wireless phone is "necessary to or used in the provision of telecommunications service" under 222(c)(1)

-Digital phone must be activated and programmed by the wireless carrier and is integral part of the licensed Title III radio service

-Information services (voice mail, short messaging) promote efficiency: save battery life, turn-off phone and receive messages, promote safety

-CCB's May 21, 1997 Clarification Order permitted use of wireless CPNI only if carrier had previously sold phone or information service to the customer

B. LANDLINE SERVICES

-ILECs should not be permitted to use local CPNI to market CPE and information at this time

-Use of local CPNI would permit ILECs to leverage their local monopoly power into the competitive CPE and information services markets

-Competitive carriers (IXCs, CLECs) should be permitted to count within the total service relationship CPE and information services related to the telecommunications service to which the customer subscribes

-No issue of leveraging in competitive markets

-Optional aspects of the service

-Construe 222(c)(1) to allow or forbear under Section 10(a)

-At minimum, allow use of CPNI to market CPE and information services closely related to the underlying telecom service

-Customized billing, enhanced announcements on toll-free calls, voice mail for virtual private networks that enable customers to track, manage and perform diagnostics

III. GRANDFATHER PRE-EXISTING AT&T APPROVALS

-Consistent with 222(c)(1) "approval"

-Annoying and confusing to customers to resolicit approval

-Cost \$70 million to solicit 27 million customers (85.9% approval)

-AT&T would provide written notice of rights and advise customers of right to withdraw prior approval

#### IV. INADEQUACY OF BOC CPNI SAFEGUARDS (272 and 274)

-Although section 222 does not generally impose differing requirements on various categories of carriers, sections 272 and 274 impose explicit additional nondiscrimination obligations on BOCs

-Section 272(c)(1)'s unqualified nondiscrimination obligation requires BOCs to treat all other entities in the same manner in which they treat their section 272 affiliates

-FCC had correctly concluded in Docket 96-149 that a BOC must provide to unaffiliated entities the same goods, services and information that its provides its section 272 affiliate at same rates, terms and conditions

-Joint marketing provisions do not alter these obligations because access to BOC CPNI is not a component of marketing or sales activity

-CPNI Order improperly reversed this decision

-Unlawful result: BOC and its long distance affiliate will be able to share CPNI without explicit customer consent, but

Unaffiliated long distance provider would need affirmative written consent to gain access to customer's BOC CPNI

-CPNI Order grants BOC LD affiliate an unfair marketplace advantage due to its affiliation with the BOC, contrary to 272 safeguards

##### A. BOC DUTIES, TAKING SECTIONS 222 and 272 TOGETHER

-A BOC cannot use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of its section 272 affiliate, unless the CPNI is made available to all competing entities on nondiscriminatory terms

-If the section 272 affiliate obtains express written consent (in the same manner than any other unaffiliated third party could), then the BOC may disclose CPNI to its 272 affiliate without disclosing it to unaffiliated entities

-However, if a BOC uses CPNI without customer consent (or any form of consent other

than affirmative written consent), it must disclose the CPNI to all other entities desiring access to it on the same terms and conditions

-Similar analysis governs the interplay between Sections 222 and 274

B. BOC SOLICITATION OF CUSTOMER APPROVAL TO USE CPNI

-If a BOC solicits customer approval to use CPNI on behalf of, or to disclose CPNI to, its section 272 or 272 affiliate, it must offer an "approval solicitation service" to unaffiliated entities, otherwise it would be engaging in preferential conduct towards its affiliate

-To be nondiscriminatory, a BOC would have to obtain approval for disclosure of the CPNI to all competing entities at the same time as for its affiliate; and the CPNI must be made available to any unaffiliated entity desiring to receive it under the same terms and conditions, and at the same time, as to the BOC-affiliated entity

C. PROPOSED RULES TO REFLECT:

• Interplay of Sections 222 and 272

"(1) A BOC shall not use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of the affiliate required by section 272 of the Telecommunications Act of 1996, unless the CPNI is made available to all competing entities on nondiscriminatory terms. The foregoing shall not apply if the section 272 affiliate itself obtained the customer's affirmative written consent prior to use, disclosure or access to the customer's BOC CPNI."

"(2) If a BOC wishes to solicit customer approval to use, disclose or permit access to CPNI to or for the benefit of its section 272 affiliate, the BOC must simultaneously seek such authorizations on behalf of its section 272 affiliate and all unaffiliated entities, without distinction, and on nondiscriminatory terms. A BOC may not use, disclose or permit access to CPNI for the benefit of its section 272 affiliate, until the transaction has been posted and a 10-day waiting period has elapsed."

• Interplay of Sections 222 and 274

"(1) A BOC shall not use, disclose or permit access to CPNI of its customers, directly or indirectly, for the benefit of the separated affiliate, electronic

publishing joint venture, or teaming or business arrangement under section 274 of the Telecommunications Act of 1996, unless the CPNI is made available to all competing entities on nondiscriminatory terms. The foregoing shall not apply if the section 274 separated affiliate, electronic publishing joint venture, or teaming arrangement itself obtained the customer's affirmative written consent prior to use, disclosure or access to the customer's BOC CPNI."

"(2) If a BOC wishes to solicit customer approval to use, disclose or permit access to CPNI to or for the benefit of its section 274 separated affiliate, electronic publishing joint venture, teaming or business arrangement, the BOC must simultaneously seek such authorizations on behalf of such entity and all unaffiliated entities, without distinction, and on nondiscriminatory terms. A BOC may not use, disclose or permit access to CPNI to or for the benefit of its section 274 separated affiliate, electronic publishing joint venture, teaming or business arrangement until the transaction has been posted and a 10-day waiting period has elapsed."

#### D. OTHER ILEC NONDISCRIMINATION DUTIES

-All ILECs have the ability to leverage local monopoly CPNI into long distance and wireless markets

-To check ILECs' ability to exploit local monopoly CPNI, FCC should apply, per sections 201(b) and 202(a), explicit nondiscrimination duties (as AT&T urges 272 requires for BOC LD affiliates) to all ILECs' use of local CPNI

-Thus, no ILEC should be permitted to use local CPNI or other customer information for marketing long distance or wireless services without making the same information available to competitors under the same circumstances, unless its long distance or wireless affiliate obtained affirmative written consent from the customer, just as an unaffiliated carrier would have to do to gain access to that customer's ILEC CPNI

#### V. ELECTRONIC SAFEGUARDS

-Flagging and Electronic Auditing separately addressed in filed CPNI Coalition Ex Parte (Ameritech 1/11/99 Letter with proposal attached) and AT&T 1/12/99 Explanatory Letter)